

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.4.2005

Coram

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. (PD) No.1225 of 2004

Jayaseelan .. Petitioner (Petitioner)

vs.

1.Arulrajan

2.The District Collector,
Vellore, Vellore District.

3.C.Narayanan ... Respondents (Respondents)

Civil Revision Petition filed against the Order dated 13.2.2004 passed in I.A. No.25 of 2004 in O.S. No.170 of 2002 by the Court of District Munsif, Ranipet as as stated therein.

For petitioner : Mr.N.Nithyanandam

For 3rd respondent: Mr.M.Sathyanarayanan

O R D E R

The revision petitioner/plaintiff filed an application before the trial Court under Order 16 Rule 1 and Section 151 of the Civil Procedure Code to summon the third respondent/third defendant as his witness and to give evidence in the pending suit. After hearing both sides, the learned District Munsif dismissed the application holding that in view of settled position of law, the practice of a party causing his opponent to be summoned as a witness has to be disapproved. Hence the revision petition.

2. Heard the learned counsel for the petitioner, Mr. N.Nithianandam and Mr.M.Sathyanarayanan, learned counsel for the third respondent.

3. Learned counsel for the petitioner has drawn my attention to the provisions under Order 16 Rule 21 of the Civil Procedure Code and cited the decision, AIR 1967 Mysore 37 (Syed Yasin vs. Saha Muhamad Hussain) in support of his contention that, to meet the ends of justice, it is necessary to summon the third respondent as a witness of the revision petitioner so as to prove his claim for damages on the ground of malicious prosecution.

4. But, on the contrary, learned counsel for the respondent has contended that even though there is no specific bar to summon the third defendant in the suit as a witness on the side of the plaintiff, the judicial precedents laid down in AIR 1938 Privy Council 59 (Mahunt Shatrugan Das v. Bawa Sham Das and others) and 1999 (I) MLJ 97 (Kaliaperumal v. Pankajavali and others) are against such practice.

5. In this context, it is sufficient to quote the ratio laid down in 1999 (I) MLJ 97, supra as under to dispose of the revision petition.

"Plaintiff wants the opposite party to be examined as their witness. According to the Court, such a practice has been deprecated by all Courts. In view of the settled legal position, the Court does not think that the petitioner can compel the second defendant to be examined as witness for him."

6. In view of such settled legal principle and also having regard to the observation made by the Karnataka High Court in the decision cited by the learned counsel for the petitioner himself viz., 1967 Mysore 37 supra, the revision petitioner can at best urge the trial Court to take adverse inference against the third respondent who has refrained from examining himself as witness in support of his own case before the trial Court. Therefore, I am of the view that with a direction to the revision petitioner to adopt the course as adumbrated in the decision referred to above, the revision petition can be disposed of.

7. Accordingly, the revision petition is disposed of with the direction that the revision petitioner can at best urge the trial Court to take adverse inference against the third respondent for his non-appearance and examination as a witness in support of his stand taken before the trial Court. However, there is no order as to costs. The Trial Court is directed to afford an opportunity to the revision petitioner as well as the respondents to mark necessary documents to the above limited extent only and dispose of the suit at an early date.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

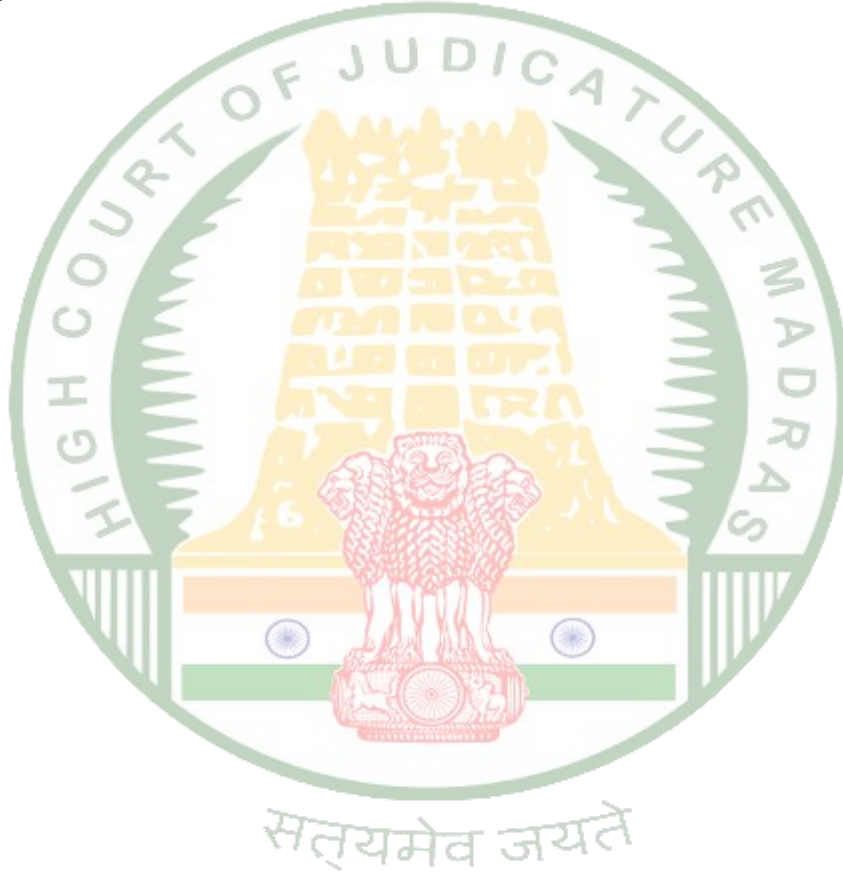
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To
The District Munsif,
Ranipet.

1 cc to Mr.M.Sathyanarayanan, Advocate, SR. 18595

CRP (PD)No.1225 of 2004

JRG (CO)
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